

ORIGINAL

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08 FEB -1 PM 3:14
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *PD* DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12
13 LARY FEEZOR,

14 Plaintiff,

15 vs.

16 SD BELL, INC. dba TACO BELL
17 #3837; GOLDEN EAGLE
18 MANAGEMENT, LLC,
19 Defendants.

No. '08 CV 0199 JM BLM

Plaintiff's Complaint

I. SUMMARY

1. This is a civil rights action by plaintiff Lary Feezor ("Feezor") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Taco Bell #3837
3895 Mission Avenue
Oceanside, CA 92054
(hereafter "the Restaurant")

2. Feezor seeks damages, injunctive and declaratory relief, attorney fees and costs, against SD Bell, Inc. dba Taco Bell #3837 and Golden Eagle Management, LLC (collectively "Taco Bell") pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.

5. Feezor's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Taco Bell owns, operates, or leases the Restaurant, and consists of a person (or persons), firm, or corporation.

- 1 • There is no ISA mounted at the latch side of the entrance to the men's
- 2 restroom;
- 3 • The restroom door requires more than 5 pounds of force to operate;
- 4 • The disposable seat cover dispenser is mounted more than 40 inches from
- 5 the floor and is behind the water closet causing it to be out of reach;
- 6 • The water closet is an obstruction to the use of the disposable seat cover
- 7 dispenser;
- 8 • The toilet tissue dispenser encroaches into the clear maneuvering space
- 9 needed to access the water closet;
- 10 • The toilet tissue dispenser is mounted above the side grab bar and more
- 11 than 19 inches from the floor;
- 12 • The toilet tissue dispenser is an obstruction to the use of the side grab bar;
- 13 • The pipes underneath the lavatory are not properly wrapped;
- 14 • The lavatory is an obstruction to the use of the hand dryer and soap
- 15 dispenser;
- 16 • The operable part of the soap dispenser is mounted more than 40 inches
- 17 from the floor; and,
- 18 • The operable part of the hand dryer is mounted at 51 inches from the floor.

19 These barriers prevented Feezor from enjoying full and equal access.

20 11. Feezor was also deterred from visiting the Restaurant because he
21 knew that the Restaurant's goods, services, facilities, privileges, advantages, and
22 accommodations were unavailable to physically disabled patrons (such as
23 himself). He continues to be deterred from visiting the Restaurant because of the
24 future threats of injury created by these barriers.

25 12. Feezor also encountered barriers at the Restaurant, which violate
26 state and federal law, but were unrelated to his disability. Nothing within this
27 Complaint, however, should be construed as an allegation that Feezor is seeking
28 to remove barriers unrelated to his disability.

1 13. Taco Bell knew that these elements and areas of the Restaurant were
2 inaccessible, violate state and federal law, and interfere with (or deny) access to
3 the physically disabled. Moreover, Taco Bell has the financial resources to
4 remove these barriers from the Restaurant (without much difficulty or expense),
5 and make the facility accessible to the physically disabled. To date, however,
6 Taco Bell refuses to either remove those barriers or seek an unreasonable
7 hardship exemption to excuse non-compliance.

8 14. At all relevant times, Taco Bell has possessed and enjoyed sufficient
9 control and authority to modify the subject property to remove impediments to
10 wheelchair access and to comply with the Americans with Disabilities Act
11 Accessibility Guidelines and Title 24 regulations. Taco Bell has not removed
12 such impediments and has not modified the subject property to conform to
13 accessibility standards. Taco Bell has intentionally maintained the subject
14 property in its current condition and has intentionally refrained from altering the
15 subject property so that it complies with the accessibility standards.

16 15. Feezor further alleges that the (continued) presence of barriers at the
17 facility is so obvious as to establish Taco Bell's discriminatory intent.¹ On
18 information and belief, Feezor avers that evidence of this discriminatory intent
19 includes Taco Bell's refusal to adhere to relevant building standards; disregard
20 for the building plans and permits issued for the facility; conscientious decision
21 to the architectural layout (as it currently exists) at the facility; decision not to
22 remove barriers from the facility; and allowance that Taco Bell's property
23 continues to exist in its non-compliant state. Feezor further alleges, on
24 information and belief, that Taco Bell is not in the midst of a remodel, and that
25 the barriers present at the facility are not isolated (or temporary) interruptions in
26 access due to maintenance or repairs.²

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28 ¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

² Id.; 28 C.F.R. § 36.211(b)

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Plaintiff's Complaint

VI. FIRST CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

16. Feezor incorporates the allegations contained in paragraphs 1 through 15 for this claim.

17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

18. Taco Bell discriminated against Feezor by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Restaurant during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Feezor alleges that Taco Bell can easily remove the architectural barriers at the Restaurant without much difficulty or expense, and that Taco Bell violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

1 22. In the alternative, if it was not “readily achievable” for Taco Bell to
2 remove the Restaurant’s barriers, then Taco Bell violated the ADA by failing to
3 make the required services available through alternative methods, which are
4 readily achievable.

5 Failure to Design and Construct an Accessible Facility

6 23. On information and belief, the Restaurant was designed or
7 constructed (or both) after January 26, 1992—independently triggering access
8 requirements under Title III of the ADA.

9 24. The ADA also prohibits designing and constructing facilities for
10 first occupancy after January 26, 1993, that aren’t readily accessible to, and
11 usable by, individuals with disabilities when it was structurally practicable to do
12 so. 42 U.S.C. § 12183(a)(1).

13 25. Here, Taco Bell violated the ADA by designing or constructing (or
14 both) the Restaurant in a manner that was not readily accessible to the physically
15 disabled public—including Feezor—when it was structurally practical to do so.³

16 Failure to Make an Altered Facility Accessible

17 26. On information and belief, the Restaurant was modified after
18 January 26, 1992, independently triggering access requirements under the ADA.

19 27. The ADA also requires that facilities altered in a manner that affects
20 (or could affect) its usability must be made readily accessible to individuals with
21 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
22 an area that contains a facility’s primary function also requires adding making
23 the paths of travel, bathrooms, telephones, and drinking fountains serving that
24 area accessible to the maximum extent feasible. *Id.*

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28 ³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

1 28. Here, Taco Bell altered the Restaurant in a manner that violated the
2 ADA and was not readily accessible to the physically disabled public—including
3 Feezor—to the maximum extent feasible.

4 Failure to Modify Existing Policies and Procedures

5 29. The ADA also requires reasonable modifications in policies,
6 practices, or procedures, when necessary to afford such goods, services,
7 facilities, or accommodations to individuals with disabilities, unless the entity
8 can demonstrate that making such modifications would fundamentally alter their
9 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

10 30. Here, Taco Bell violated the ADA by failing to make reasonable
11 modifications in policies, practices, or procedures at the Restaurant, when these
12 modifications were necessary to afford (and would not fundamentally alter the
13 nature of) these goods, services, facilities, or accommodations.

14 31. Feezor seeks all relief available under the ADA (*i.e.*, injunctive
15 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
16 U.S.C. § 12205.

17 32. Feezor also seeks a finding from this Court (*i.e.*, declaratory relief)
18 that Taco Bell violated the ADA in order to pursue damages under California's
19 Unruh Civil Rights Act or Disabled Persons Act.

20 VII. SECOND CLAIM

21 **Disabled Persons Act**

22 33. Feezor incorporates the allegations contained in paragraphs 1
23 through 30 for this claim.

24 34. California Civil Code § 54 states, in part, that: Individuals with
25 disabilities have the same right as the general public to the full and free use of
26 the streets, sidewalks, walkways, public buildings and facilities, and other public
27 places.

35. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

36. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

37. Here, Taco Bell discriminated against the physically disabled public—including Feezor—by denying them full and equal access to the Restaurant. Taco Bell also violated Feezor’s rights under the ADA, and, therefore, infringed upon or violated (or both) Feezor’s rights under the Disabled Persons Act.

38. For each offense of the Disabled Persons Act, Feezor seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.

39. He also seeks to enjoin Taco Bell from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

VIII. THIRD CLAIM

Unruh Civil Rights Act

40. Feezor incorporates the allegations contained in paragraphs 1 through 30 for this claim.

41. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

44. Taco Bell's aforementioned acts and omissions denied the physically disabled public—including Feezor—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Feezor by violating the Unruh Act.

46. Feezor was damaged by Taco Bell's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

47. Feezor also seeks to enjoin Taco Bell from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

48. Feezor incorporates the allegations contained in paragraphs 1 through 13 for this claim.

49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

1 51. Feezor alleges the Restaurant is a public accommodation
2 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
3 and Safety Code or Government Code § 4450 (or both), and that the Restaurant
4 was not exempt under Health and Safety Code § 19956.

5 52. Taco Bell's non-compliance with these requirements at the
6 Restaurant aggrieved (or potentially aggrieved) Feezor and other persons with
7 physical disabilities. Accordingly, he seeks injunctive relief and attorney fees
8 pursuant to Health and Safety Code § 19953.

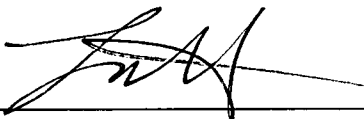
9 X. PRAYER FOR RELIEF

10 WHEREFORE, Feezor prays judgment against Taco Bell for:

- 11 1. Injunctive relief, preventive relief, or any other relief the Court deems
12 proper.
- 13 2. Declaratory relief that Taco Bell violated the ADA for the purposes of
14 Unruh Act or Disabled Persons Act damages.
- 15 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
16 California Civil Code (but not both) according to proof.
- 17 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 18 5. Interest at the legal rate from the date of the filing of this action.
- 19

20 DATED: January 30, 2008

DISABLED ADVOCACY GROUP, APLC

21 
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23 LYNN HUBBARD, III
24 Attorney for Plaintiff
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28 ⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Feezor v. SD Bell, Inc., et al.
Plaintiff's Complaint

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

LARY FEEZOR

(b) County of Residence of First Listed Plaintiff SISKIYOU
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DISABLED ADVOCACY GROUP, APLC (530) 895-3252
12 WILLIAMSBURG LANE CHICO, CA 95926

DEFENDANTS

SD BELL, INC. dba TACO BELL #2828 GOLDEN EAGLE
MANAGEMENT, LLC

County of Residence of First Listed Defendant REDDING U.S. DISTRICT COURT
(IN U.S. PLAINTIFF CASES ONLY) DISTRICT OF CALIFORNIA

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

BY: PPC

DEPUTY

Attorneys (If Known)

'08 CV 0199 JM BLM**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF ☐ 1 Incorporated or Principal Place of Business In This State
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF ☐ 2 Incorporated and Principal Place of Business In Another State
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF ☐ 3 Foreign Nation ☐ 6 PTF ☐ 6 DEF ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/30/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

147158
350.00
2/1/08 PPC

OK

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

147158 - SR

**February 01, 2008
15:08:22**

Civ Fil Non-Pris

USAO #.: 08CV0199 CIV. FIL.

Judge.: JEFFREY T MILLER

Amount.: \$350.00 CK

Check#.: BC#20581

Total-> \$350.00

FROM: FEEZOR V. SD BELL, ET AL
CIVIL FILING